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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

(a) Under the Contract Law of Cyprus, Cap.149 as amended, there is generally no explicit legal requirement that, in order to create an enforceable debt obligation, the sales of goods or services be evidenced by a formal receivables contract, except for certain exceptions (e.g. mortgages). Article 10, s. 1 states that a contract may be made in writing, orally, partly written or partly oral, or may be inferred from the conduct of the parties.

(b) The unilateral issuance of an invoice by the Seller does not constitute a legally binding contract *per se*. However, the acceptance by the recipient, i.e. when the invoice has been signed by the obligor, is usually sufficient evidence that the invoice amounts to a contractual relationship.

(c) As mentioned above, a binding contract may also be inferred from the behaviour of the parties involved. Despite the above, it is advisable for good commercial practice as well as for evidential reasons, and in order to have the option of claiming specific performance of the arrangement before the court, that such transactions be evidenced in writing.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

Regarding receivables that relate to credit facilities

The now repealed Interest Law, which is, however, applicable to credit facilities granted up until 1 January 2001, provides that the Seller (in its capacity as lender) is not entitled to:

(i) impose an interest rate higher than 9%; or

(ii) via an action, recover an interest amount that exceeds the initial capital amount.

The Liberalisation of Interest Law, L. 160(I)/1999, currently in force, imposes (among others) the following main obligations on the Seller (in its capacity as lender and where it is an authorised credit institution under Cyprus law or an entity falling under article 4(1) of Regulation (EU) No. 575/2013):

(i) inform the debtors by a written notice for any change related to the base rate as well as change on the credit facility instalment whenever this is revised;

(ii) not capitalise interest more than twice a year; or

(iii) not to charge default interest rate higher than 2% from 9 September 2014 onwards.

Furthermore, the Consumers relating to Residential Immovable Property Law of 2017 and Consumer Contracts Law 106(I)/2010 afford the obligor, where it operates in its capacity as consumer, to exercise a right of withdrawal from the credit agreement within five and 14 working days from the conclusion of the agreement respectively.

Lastly, under section 314A of the Penal Code, Cap.154, any person (other than a bank) who receives, collects, charges, agrees or takes (for his benefit or for the benefit of another person) financial benefit or assets that exceed the "reference rate", upon the granting of a loan, the extension of the repayment deadline, the renewal or early repayment of the loan, commits a criminal offence. The reference rate is calculated every three months by the Central Bank of Cyprus ("**CBC**").

Regarding receivables other than credit facilities

As per the Consumer Protection Law, 112(I)/2021, no limitations on the interest rate or default interest rate charged are imposed, except those agreed between the parties, provided the terms of the agreement are not rendered void after being deemed unfair. Unfair terms include those that provide for the charging of interest calculated on the basis of 360 days per year and not 365 days; furthermore, under certain conditions, the consumer has the right of withdrawal from an agreement within 14 days of its conclusion.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

The general position is that the contract law principles applicable to private persons are also applicable to entities governed by public law, such as governmental authorities. Nonetheless, both the procedure prior to entering into a contract, as well as the performance of contracts entered into, with a public body shall comply with procurement and public contracts-related legislation.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

Where there is no choice of law in the contract, the Cyprus court will determine the governing law of the contract by reliance on either the Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ("**Rome I Regulation**") or, where the foregoing Regulation is not applicable, on the basis of the relevant common law position.

In practice, what can be inferred from the relevant case law of the Cyprus courts is that, in the absence of relevant choice of law in the receivables contract, Cyprus courts will seek to ascertain the intention of the parties in concluding the contract in question and/or will seek to draw an inference, based on the circumstances of each case, as to the country which the transaction in question is manifestly more closely connected to, having regard to all the elements relevant to the transaction. (e.g. the country in which the party required to effect the characteristic performance of the contract has their habitual residence).

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

As a general rule, the "proper law of the contract" is the law intended by the parties. Without prejudice to any other provisions of the Rome I Regulation suggesting otherwise, (such as the existence of any overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, insofar as those provisions render the performance of the contract unlawful) the parties can, by their choice, select the law applicable to the whole or part of the contract and a court will generally apply the law that the parties to the contract intended to apply, having regard to all other elements relevant to the contract in question.

It should be borne in mind, however, according to related case law and with reference to the Rome I Regulation, that while the chosen law is one of the most important factors to be taken into account, it should be weighed against all other elements relevant to the transaction in question that may indicate, in the circumstances, that another country's law has been clearly demonstrated, other than that initially chosen by the parties.

Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country that cannot be derogated from by agreement.

As regards the circumstances laid down in the Base Case above, it can be concluded that the fact that a Seller and obligor are both resident in Cyprus, the underlying transactions have taken place in Cyprus, and both parties have chosen Cyprus to govern their receivables contract, poses no apparent reason why a Cyprus court would refrain from giving effect to their choice of law.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

As a general rule, Cyprus courts, after accepting jurisdiction, may enforce a choice of law clause irrespective of the nationality of the contracting parties, on the basis of either the European legislative instruments, including Rome I Regulation, or the common law principles of private international law adopted into Cyprus law via Supreme Court case law.

The foregoing remains subject to any public policy (e.g. where illegality is successfully alleged) or mandatory principles of law (e.g. insolvency rules of a Cyprus company under the Companies Law, Cap.113) that might entitle the Cyprus court to not follow the chosen applicable law (*lex causa*).

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

The Cypriot legal framework does not set out any general rule requiring that the sale of receivables be governed by the same law as the law governing the receivables themselves. As mentioned above, subject to limitations posed under the Rome I Regulation, the parties to the contract are free to choose the law governing their receivables contract and, pursuant to articles 3 and 14 of the Rome I Regulation, the Seller and the Purchaser could choose the application to the sale contract of a different law than that applying to the receivable itself.

In such cases, according to article 14(2) of the Rome I Regulation, the law governing the receivable shall determine its assignability, the relationship between the assignee and the obligor, the conditions under which the assignment may be invoked against the obligor and whether the obligor's obligations have been discharged.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

If the contracting parties have chosen Cyprus law to govern their receivables purchase agreement, both the Seller and obligor

are located in Cyprus, and the receivable itself is governed by Cyprus law, the above-mentioned sale would be recognised by a Cypriot court as being effective against the Seller, the obligor and third parties, irrespective of the location of the Purchaser, subject, however, to any limitations possibly imposed by European legislative instruments, including the Rome I Regulation, and provided that the transfer agreement complies with the requirements under Cyprus law and the underlying receivables agreement does not contain any transfer restrictions.

The foregoing depends on the nature of the transaction in question, and whether such transaction might require additional formalities, in accordance with the Cypriot legal framework, in order to be recognised as being effective. For instance, assuming that the sale refers to the sale or transfer of credit facilities, the Sale of Credit Facilities Law provides for a framework under which such sale or transfer is to be effected (please refer to the answer to question 4.2 below).

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

Assuming that the parties have chosen Cyprus law to govern the receivables purchase agreement and the receivable itself is governed by Cyprus law, the fact that either the obligor or the Purchaser or both are located outside Cyprus, should not prejudice in itself the effectiveness of that sale.

Where, however, all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, article 15 of the Preamble of the Rome I Regulation states that the choice of law should not prejudice the application of provisions of the law of that country that cannot be derogated from by agreement.

As such, taking into consideration all other elements of the transaction in question and in the absence of any compelling reason, such as mandatory provisions of law or public policy grounds that would potentially affect the court's decision to recognise the sale as being effective against the Seller and other parties, a Cyprus court would give effect to the law chosen by the contracting parties.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

If the contracting parties choose another country's law to govern the receivables agreement and the sale complies with that other country's requirements, a Cyprus court, subject to any limitations referred to in the answer to question 3.3 above that might affect its judgment, may enforce a sales agreement governed by foreign law without the need to comply with Cyprus sale requirements.

The above answer, however, is given on the assumption that the Cyprus court accepts jurisdiction as being the proper forum to hear the disputed matter (which decision is based on the principles of "*forum non-conveniens*" where the common law principles are followed, and on the basis of Regulation 1215/2012 where the seller and/or purchaser is located in a European Union member state), that it is satisfied as to the existence of a good cause of action under that foreign law, and satisfied by the pleadings and the evidence before it regarding any foreign element of the sale in question.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

As mentioned above, a Cyprus court may, subject to any limitations referred to in the answer to question 3.3 above that might affect its judgment, enforce a sales agreement governed by foreign law without the need to comply with Cyprus sale requirements insofar as the contracting parties choose that foreign country's law, the sale complies with that country's law and the Cyprus court is satisfied by the pleadings and the evidence before it regarding any foreign element of the sale in question.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

With reference to the answer to question 3.1 above and question 4.1 below, there is no general rule under the Cypriot legal framework requiring that the sale of receivables be governed by the same law as the law governing the receivables themselves. A Cyprus court, subject to any limitations referred to in the answer to question 3.3 above that might affect its judgment, may recognise the above sale as being effective against the Seller and third parties insofar as the contracting parties choose the law of the Purchaser's country, the sale complies with that country's law and the Cyprus court is satisfied by the pleadings and the evidence before it regarding any foreign element of the sale in question.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

There are no statutory restrictions in the Cypriot legal framework as to the method utilised by a Seller to sell receivables to a Purchaser.

Assuming that the receivables concern credit facilities, including all the rights and obligations of the credit facility agreement of the account thus transferred, the wording of the Sale of Credit Facilities Law suggests that it is more customary for a Seller to sell or transfer, as opposed to assigning, receivables to a Purchaser. That said, governing documents will often use the above terminology (i.e. sale, transfer, assignment) interchangeably.

Furthermore, the factors discussed in the answer given to question 4.9 below shall be considered in respect of whether a transfer would be recognised as an outright sale or carry the risk of being re-characterised as a loan with (or without) security. Nonetheless, regardless of whether the transaction is characterised as an outright sale or a loan, certain transactions, such as the sale of credit facilities, will require additional formalities to be met in order for the transfer to be enforceable against third parties. In particular, under the Sale of Credit Facilities Law as amended to date, certain categories of sellers (including banks) may only transfer credit facilities to specific categories of authorised "purchasers", including credit acquiring companies.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

As a general matter, the Cypriot legal framework does not set out strict formalities for perfecting a sale of receivables as this will depend on the subject matter of each transaction and whether there may be additional formalities required for the perfection of a specialised transaction.

Under article 18 of the Sale of Credit Facilities Law as amended last July, for instance, any sale or transfer of credit facilities will be subject to the provisions laid down therein, including the requirement that prior to the sale of the whole or part of the credit facility, the Seller shall:

(a) either notify its intention to sell the whole or part of its portfolio of credit facilities provided that the said notification is published in the Official Gazette of the Republic of Cyprus and in three newspapers and further provided that, the borrowers and the guarantors, if they so wish, may submit, within a period of 45 days, a proposal to purchase the credit facility under sale; and

(b) if only part of the portfolio will be sold, the Seller shall also (in addition to the obligation described at point (a) above, the publication of which will, however, only include a general description of the intention to sell), notify, in writing, the borrower and any guarantors, of the intention to sell and call on them to submit, if they so wish, within the above-mentioned period, a proposal to acquire the credit facility under sale.

The above obligations are not applicable to an intragroup sale but are applicable to subsequent good faith purchasers for value of the same receivables (in case they are not within the same group of companies of the initial purchaser).

Furthermore, both the Seller and the Purchaser shall notify the borrower, guarantors and security providers within 15 business days from the date of transfer of said receivables.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

As regards the transfer of promissory notes, the provisions of the Bills of Exchange Law, Cap.262 as amended, apply, with any necessary amendments, to promissory notes. The aforementioned law provides that a promissory note would be inchoate and incomplete until necessary delivery to the holder or bearer thereof is effected, and for any subsequent transfer to be valid it shall require endorsement and delivery to the next holder or bearer therefor.

In respect of the sale of consumer loans and loans secured by mortgage, the sale or transfer of such loans shall be made in accordance with the Sale of Credit Facilities Law mentioned in the answer to question 4.2 above. According to the said law, upon transfer of the credit facility, all rights and obligations arising from the credit facility agreement of the account thus transferred, including any securities of the account thus transferred, such as mortgage over land, are **automatically** transferred to the relationship between the obligor and the Purchaser.

Despite the fact that securities are considered to be transferred automatically with the transfer of the credit facility, in the event of any pending proceedings before a court, such as foreclosure proceedings concerning mortgage loans, relevant notice of the sale or transfer shall be given to the District Court Registry and/or the District Land Registry Office.

Furthermore, as regards charges on property owned by companies incorporated under Cyprus law, a similar notice and registration shall be filed to the Cyprus Registry of Companies, as provided by article 90(2) of the Companies Law (Cap.113), in order for them to become perfected.

Any transfer related to, or pledge over, dematerialised securities that are listed on the Cyprus Stock Exchange, and registered on the Central Securities Depository and Central Registry, should be recorded at the Central Registry, in order to be valid.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

As a general matter, an equitable assignment of debt may be effected, irrespective of whether notice has been given to the obligor. Depending on the transaction in question, notice may be required in order to perfect the sale.

Please refer to the answer given to question 4.2 above as regards the requirements for obligor notification in respect of the sale of credit facilities. Under the Sale of Credit Facilities Law, the obligor should be notified of the sale of receivables within the time period prescribed therein.

Consent of the obligor is generally not required to perfect a valid transfer of receivables, unless otherwise agreed by the

parties to the original agreement. The Sale of Credit Facilities Law imposes no requirement as to the obligor's consent. The obligor may, however, under the time period prescribed, submit a proposal to purchase the credit facility for sale.

The additional benefit of giving notice of sale to the obligor (in cases other than those covered under the Sale of Credit Facilities Law) might include cutting off any set-off rights of the obligor, in case that such set-off rights have been agreed upon between the parties.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

Regarding the transfer of credit facilities, please refer to the answer to question 4.2 above as regards the requirements prescribed by the Sale of Credit Facilities Law as to the form of notice or how it must be delivered, as well as the relevant notice periods within which notice is considered to be effective.

As regards delivery of notice after insolvency proceedings have commenced against the obligor, subject also to the answer given to question 4.10 below, the liquidator or trustee in bankruptcy shall be notified within the time periods prescribed by the Companies Law, for the purpose of notification for proof of debt and ranking of claims.

Subject to any limitations referred to in the answer given to question 4.11 below, the obligor may be notified of the transfer of future receivables arising from an existing contract.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

The effect of the three proposed clauses mentioned above would most likely not be interpreted in the same way by a Cyprus court.

As regards the first and second clause, it would most likely be interpreted as prohibiting the transfer of receivables by the Seller to the Purchaser under the agreement, as the wording of both suggests that neither the rights nor obligations shall be transferred under the agreement.

On the other hand, the third clause does not prohibit the transfer or assignment of receivables. Hence, the consent of the obligor would not be required to transfer receivables under the agreement. It should be noted, however, that as a general rule, under the Cypriot legal framework, obligations under a contract are not transferred via assignment of liability but rather via novation of the contract.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

If there are restrictions on assignment contained in an agreement, these would generally be enforceable in Cyprus, unless such a restriction is explicitly prohibited by law. Unless such limitations are expressly prohibited, there is no reason why contract law principles would not apply. Therefore, in the event that a Seller sells receivables to the Purchaser, notwithstanding an express contractual clause prohibiting such sale, the Seller may be found liable to the obligor for breach of contract. Furthermore, where the purchaser knew of the restriction included in the receivables contract, it might be liable for the tort of inducement of the breach of contract.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

In the Cypriot legal framework, no specific rule determines the form in which receivables should be identified in a sale of receivables contract. The sale document, however, as any sale and purchase agreement concerning an asset to be transferred, should specify the receivables to be sold in such a way as to be sufficiently identifiable and differentiated from any other receivables not included in the sale in question.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

As a general matter, Cypriot case law suggests that the title or characterisation given to the relevant documents relating to the transaction are not, *per se*, determinative as to the legal nature of the transaction in question. In order to characterise the transaction either as an outright sale or as a loan with (or without)

security, the court will weigh all the relevant terms and attributes relating to the transaction, in order to ascertain its true legal nature, depending on the particular facts and circumstances of each case.

That said, the courts are somewhat reluctant to re-characterise a transaction when there is an explicit statement of intention by the parties, and may give presumptive weight to the intent of the parties.

Nevertheless, key elements in finding that a transaction resembles a sale, as opposed to a loan, are that recourse to the Seller is limited or that the Seller does not retain material benefits of ownership (e.g. right to the residual profits). If such elements exist, there is an increased risk that the court may view the transaction as being more indicative of a loan rather than a sale.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

The Cypriot legal framework does not set out restrictions regarding the enforcement of an agreement concerning the continuous sales of receivables; therefore, such an agreement could be enforced before Cyprus courts. However, such disposition of the property (including causes of action, such as receivables) of the Seller under article 216 of the Companies Law (Cap.113) would be void if entered into after commencement of the Seller's winding-up. Furthermore, according to article 301 of the Companies Law (Cap.113), any act relating to property made or carried out by or against the Seller, within six months before the commencement of its winding-up, is rendered invalid in case – had it been done by or against the Seller as a natural person – it would be deemed a fraudulent preference under the Bankruptcy Law, Cap.5. Under articles 47 and 48 of the Bankruptcy Law, Cap.5, the transfer of the receivables, via assignment, could constitute a fraudulent preference transaction, unless (among others) the Purchaser acted in good faith and offered consideration.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

Yes, the Seller can commit in an enforceable manner to sell receivables to the Purchaser that come into existence after the date of the receivables purchase agreement. Nevertheless, such a commitment could be challenged by the Insolvency Official, irrespective of whether it was entered into before or after the commencement of winding-up, on the grounds noted in the answer to question 4.10.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Please refer to the answer given to question 4.2 above as regards the requirements for notification to the obligor of the sale of receivables.

Assuming that notification has been given as required and described in the answer to question 4.2 above, subsection 3(a) of article 18 of the Sale of Credit Facilities Law provides that the transfer of the credit facility agreement automatically entails the transfer of the rights and obligations, i.e. security interests, ancillary to it.

Furthermore, with reference to the answer in questions 7.1 and 7.3 below, article 18 of the Securitisation Law, No. 88(I)/2018 ("the **Cypriot Securitisation Law**") provides that, if the Purchaser is a securitisation special purpose entity ("**SSPE**"), said SSPE, **concurrently** with the transfer of exposures to the SSPE, substitutes the originator as to all the rights and obligations relating to the collaterals attached to the exposure, and carried out notwithstanding the provisions of any other law or directives that apply to the originator and the SSPE.

The said transfer is reflected on the public registries, including the Registrar of Companies, via the submission of a notice without the payment of any fees.

Please also refer to the answer given to question 4.3 regarding any additional formalities required for perfecting the transfer of promissory notes, loans and debt securities.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

The Cypriot legal system, in principle and according to the case law, does not give the right to set-off against owed amounts, unless the contracting parties have agreed so. Consequently, in the case where a receivables contract does not contain the aforementioned provision, the obligor has no set-off rights. Even though the termination of set-off rights in case of assignment is not explicitly dealt with in binding case law, the Supreme Court has established the general position that the assignment/transfer of contractual rights is recognised under Cyprus law and does not violate the constitutional right to enter into a contract, where the rights and obligations arising under the agreement are not adversely affected pursuant to the assignment/transfer ([2010] 1 SCJ 1833). Furthermore, article 19 of the Cypriot Securitisation Law provides that the transfer of the facilities does not affect the contractual and/or statutory rights and obligations of the borrower or the security provider over the transferred credit facility.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

In the context of the Cypriot jurisdiction, there are numerous methods enabling the extraction of residual profits from the Purchaser. The most typical ones include: firstly, the Seller taking fees for administering the receivables contracts and collecting the receivables and/or arranging or managing the portfolio of receivables; secondly, the Purchaser paying deferred consideration to the Seller on the receivables purchased; and thirdly the Purchaser being an affiliate/connected person to the Seller.

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

It is not customary to take a "back-up" security interest in the Cypriot jurisdiction, but rather additional contractual protection (which entitles the innocent party to claim damages in case of violation) is offered via the granting of relevant contractual representations and warranties by the Seller.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

This is not applicable.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

It is possible to grant security over all of the Purchaser's assets by a fixed or floating charge, a share pledge over any of its subsidiaries, or in the form of an assignment; where the Purchaser is a company incorporated under the Cyprus Law, all the aforementioned charges and assignments (with the exception of the share pledge and any financial collateral that falls under the scope of the Financial Collateral Arrangements Law) must be notified and then registered into the Cyprus Registry of Companies in order for them to become perfected, as provided by article 90(2) of the Companies Law (Cap.113). Additional formalities may be required depending on the nature of the receivables.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

Rendering the security interest fully valid and perfected before a Cyprus court may require determination of whether the requirements of the related legal framework in Cyprus (including the presentation of certified copies of the security document before the Insolvency Official, as prescribed in article 251(12) of the Companies Law, Cap.113, as well as any additional formalities, depending on the nature of the receivables) were fulfilled as well.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

Except in certain limited cases, no formalities in addition to those generally applicable to security over receivables apply in connection to the above-mentioned security interests. As such, analogous formalities to those mentioned in the answer to the question 5.3 above would apply.

Security interests over marketable debt securities and promissory notes could require additional perfection requirements (please refer to the answer given to the question 4.3 above).

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

Yes, in the Cypriot jurisdiction trusts are recognised and rendered enforceable through the Trustees Law (Cap.193) and the International Trusts Law of 1992 (Law 69(I)/1992), as well as through the common law principles on trusts. Consequently, a trust over the receivables, will be, in principle, enforced by a court in Cyprus.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security taken over a bank account located in your jurisdiction?

Yes, in the Cypriot jurisdiction, escrow accounts are recognised. Typically, a fixed charge is the practical method of taking security over a bank account. Albeit not market standard, a court in Cyprus would recognise a foreign law grant of security taken over a bank located in Cyprus, in principle, if the perfection requirements and/or formalities set out by the Cypriot legal framework over the security provider, and the foreign legal framework that may apply, are satisfied.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

Normally, the secured party is afforded control over all cash flowing into the bank account from enforcement forward until the secured party is repaid in full. The foregoing control shall be carried out in compliance with the terms and/or conditions and/or requirements of the Related Security agreement. It should be noted that, practically, the account-holding bank shall be informed through a specific notice regarding the creation of the security and be requested to acknowledge its compliance with the Related Security agreement.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

The owner of the account could be able to access the funds in the account prior to enforcement, in the manner and to the extent prescribed for in the Related Security agreement. In the event the owner of the account has access to the funds in the

account regardless of a consent by the chargee, the nature of the security might be affected, via reclassification of a fixed into floating charge, impacting the priority of the security with regard to other creditors of the owner of the account.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

In the event that the Purchaser has become the owner of the receivables before the Seller's winding-up commencement, then the Purchaser's right to recover or otherwise deal with the receivables will only be affected if the circumstances described in the answer to question 4.10 above or question 6.2 below are satisfied. In the event that the Purchaser is a secured party, then to the extent that the security has been registered accordingly, as explained in response to question 5.3 above, the Purchaser will benefit from section 233A(6) of the Companies Law, Cap.113, which provides that the preferential creditors, do not have any right or priority in relation to any proceeds out of the secured property (which shall be used in order to repay the secured amounts) but will merely be entitled to any outstanding amount of proceeds. It is further noted that in this former case, the filing a proof of debt with the Official Receiver of the Registrar of Companies, in compliance with certain additional provisions regarding the value of the secured property, will also be needed.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

In accordance with article 220 of the Companies Law (Cap.113), no action or proceeding may proceed or commence against the company under winding-up, except with the consent of the court. Furthermore, the Insolvency Official's powers as presented in article 233 of the Companies Law (Cap.113) entitle the former to potentially take legal measures against the Purchaser's actions and exercise its rights over the receivables (e.g. by means of injunction), on account of the court's or the Inspection Committee's approval, if the sales agreement is considered challengeable for the reasons explained in question 4.10 above.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

As explained in questions 4.10 and 6.2 above, any transaction regarding a company's property that is entered into six months before the commencement of the winding-up with a view to giving a creditor a preference over other creditors, may be invalid as a fraudulent preference. The above also applies to cases where, the transaction is entered into with a Purchaser that belongs in the same group of companies (defined under the Companies Law, Cap.113 as a parent undertaking and all its subsidiary undertakings) as the Seller, rendering it a "related party" transaction.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

Since the Purchaser constitutes a distinct legal entity from the Seller, then the Insolvency Official (which is the liquidator or the Official Receiver of the Registrar of Companies) cannot, under any circumstances, consolidate the assets and liabilities of the Purchaser and the Seller in one insolvency proceeding. However, if the Purchaser is owned by the Seller, then the Seller could, in practice, pass a shareholder resolution to voluntarily wind up the Purchaser. The "consolidation" described above shall, however, not result in the circumvention of the liquidation principles prescribed under the Companies Law (Cap.113), including the priority of payments from the pool of the liquidation assets of the company under liquidation.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

Where the circumstances described in answers 4.10 and 6.2 above, under which the Insolvency Official has the power to challenge certain transactions, are not satisfied, the insolvency proceedings will not affect the rights of the Purchaser as acquired under the principles of contract law and equity shall continue to apply, despite the fact that the approval of the court must be obtained for the Purchaser to be able to initiate proceedings against the Seller. Nonetheless, it should be added that, under section 304 of the Companies Law (Cap.113), a company's liquidator has the right, after receiving the court's permission, and within 12 months of the commencement of winding-up, to disclaim and therefore, terminate the receivables agreement in the event that it is regarded as an "unprofitable/onerous contract". Lastly, if the transfer/assignment of receivables, based on the receivables purchase agreement, requires further action by the Seller to be perfected, the liquidator may decide not to take such action, resulting in the Purchaser's remedy to be an unsecured claim in the insolvency proceedings.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.4 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

There is limited guidance from the related case law and the legislative context with regard to this matter. Nevertheless, it is possible to conclude that, in principle, a contractual provision, which was freely negotiated and agreed upon between the contracting parties, is practically quite likely to be decided as being effective by the court. Therefore, a debtor whose debts fall under such limited recourse provision will possibly not be declared insolvent on grounds that it cannot pay its debts as they become due since the person to which the amounts are owed may not be qualify as a creditor since the liability will contingent and not liquidated.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction? Does your jurisdiction define what type of transaction constitutes a securitisation?

The Cypriot legal framework for securitisation transactions is established under the Cypriot Securitisation Law. The term securitisation is defined by reference to the Regulation (EU) 2017/2402 ("**Securitisation Regulation**") and therefore captures any transaction or scheme whereby the credit risk associated with an exposure or a pool of exposures is tranched and, among others, payments regarding such transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures. The national competent regulatory authority is the CBC.

The main participants in a securitisation structure are the: (i) originator (also defined by reference to the Securitisation Regulation as an entity that, either directly or indirectly, was involved in the original agreement that created the obligations of the debtor regarding the exposures being securitised, or purchases a third party's exposures on its own account and then securitises them); and (ii) SSPE in the form of a legal entity, established for the mere purpose of carrying out one or more securitisations, and whose structure is intended to isolate the obligations of the said entity from those of the originator.

The basic elements of the securitisation regime consist of the originator's obligation to:

(a) submit with the CBC a notification of the former's intention to operate an SSPE, accompanied with the supporting information and documentation proving that the requirements imposed under the law are satisfied;
(b) notify the borrowers of the underlying facilities 30 days prior to the transfer of the credit facilities via the notification means prescribed in the law; and
(c) appoint an entity to operate as the licensed servicer being one of the regulated entities referred to in the law, which will, among others, manage the pool of the receivables or facility exposures on a day-to-day basis.

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

As stated in question 7.1 above, the law provides for the establishment of SSPEs that shall comply with the following:

(a) its memorandum of association or other constituting documents shall provide that the activities of the SSPE are limited to those reasonably required for conducting transactions that are intended or required to effect the securitisation and other related or ancillary activities;
(b) the management body shall be made up of persons who have good character and good repute and who are not members of the management body of the originator; and
(c) appointment of the servicer to which a power of attorney may be granted, including the right to enter into negotiations and take binding decisions with the underlying debtors with respect to the restructuring of exposures in accordance with the Arrears Management Directive, or pursuant to the Personal Insolvency (Personal Repayment Plans and Debt Relief Order) law or Part IVA of the Companies Law, as appropriate.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

No market practice has been established, due to the law being in force for a short period. Nonetheless, the benefit of establishing an SSPE operating as a securitisation vehicle in or from Cyprus, is that articles 18 and 20 of the law apply. On the foregoing basis, and provided the transfer or assignment relates to the total amount of each exposure, the SSPE **simultaneously** with the transfer of exposures to the SSPE, substitutes the originator as to all the rights and obligations relating to the collaterals attached to the exposure, notwithstanding the provisions of any other law or directives that apply to the originator and the SSPE. The above substitution is recorded and entered in the public registers kept by the competent national authorities for the respective collateral categories, including the registers of the Department of Lands and Surveys and the Department of Registrar of Companies and Official Receiver, **without the payment of any tax, fee, levy or other charge**.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

Subject to the response to question 2.3 above, Cyprus courts will proceed with enforcing agreements governed by foreign law whose effect and applicability shall be proved as a fact via the submission of expert evidence.

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

As a matter of principle, under Cyprus law, the question of limitation is a matter of procedure and it is therefore governed by the *lex fori* (i.e. Cyprus law). The Supreme Court has also noted on the matter that a "*distinction has to be drawn between statutes of limitation which bear the remedy and those which extinguish the right. In the former case obviously they are rules of procedure, whereas in the latter they are rules of substantive law*". Therefore, the validity of the non-petition clause will be assessed against section 28 of the Contract Law, Cap.149, which provides that agreements that absolutely restrict or limit the time within which the party may enforce its rights before the court, are void. In particular, where the non-petition clause (governed by foreign law) extinguishes the claim that so ceases to exist and is consequently outside the scope of section 28 of the Contract Law, Cap.149 and not subject to it, then the non-petition clause will be given effect by Cyprus courts (Admiralty Action No. 178/78).

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

The answer is affirmative, subject to our response to question 2.3 above, and subject to the priority of payments set out under the Cypriot insolvency/bankruptcy laws and which the Cyprus court will apply where the person under bankruptcy/winding-up is established under Cyprus law.

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

The answer is affirmative, subject to our response to question 2.3 above, with regard to the contractual provision in an agreement. The inclusion of such restrictions in a party's organisational documents is permitted to the extent that it does not contravene the mandatory provisions of Companies Law, Cap.113 applicable to insolvent Cypriot entities.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

Typically, the Purchaser is established in Cyprus, where the Sale of Credit Facilities Law that regulates the operation of credit-acquiring companies, applies. The aforesaid law affords the benefit of automatic transfer of the Related Securities covering the receivables on the date of the transfer, as well as the replacement of the Seller with the Purchaser in the public registries, without fees as explained in question 4.3 above.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

The Purchaser will require authorisation under the sale if the receivables fall under the scope of the Sale of Credit Facilities Law and the Purchaser is neither: an authorised credit institution under the Business of Credit Institutions Law; nor a credit institution that is (i) authorised and supervised by the competent authority of another Member State, (ii) which has the right to provide services or to establish a branch in Cyprus or a financial institution, (iii) which is a subsidiary of a credit institution incorporated in a Member State, and (iv) which provides its services in the Republic or operates in the Republic through a branch, under the provisions laid down in sections 10A and 10B*bis* of the foregoing law, respectively.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

As of July 2022, the servicing of credit facilities in the Republic of Cyprus, including the enforcement and collection of receivables, is a regulated activity and must only be performed by legal persons authorised by the Central Bank of Cyprus.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

The Law providing for the Protection of Natural Persons with regard to the Processing of Personal Data and for the Free Movement of such Data of 2018, No. 125(I)/2018) complements the protection of personal data of natural persons under the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("**GDPR**"), which also forms part of Cyprus law. Furthermore, the Law on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, No. 164(I)/2022, also protecting enterprises, entered into force on 27 November 2020.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

In addition to the protective provisions described in our response to question 1.2 above, the Credit Agreements for

Consumers relating to Residential Immovable Property Law of 2017, the Consumer Contracts Law 106(I)/2010 and the Consumer Protection Law, 112(I)/2021, as amended, aim to protect consumers (defined as natural persons who enter into an agreement for reasons irrelevant to the exercise of their business, trade or profession) entering into specified categories of facilities, such as housing loans, hire purchase agreements, overdrafts, and credit facilities granted for specified amounts, under applicable conditions. Typical credit consumer law violations are agreements/clauses that provide the Seller (in its capacity as lender) with a right of immediate termination, including generic clauses for the imposition of charges, expenses, commissions, etc, as well as terms giving the right to the Seller to unilaterally vary the interest rate, default interest and other charges.

Furthermore, the Purchaser (where it is a regulated entity, such as a bank or a credit-acquiring company) will be required to comply with any applicable secondary legislative instruments, including the Arrears Management Directive issued by the CBC, and which provides for posting a minimum number of arrears notifications before termination of the credit facility agreement.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

Following the accession of Cyprus to the European Union in May 2004, the exchange control restrictions were lifted, with the only remaining payments restrictions relating the applicable Anti-Monday Laundering and Sanctions laws.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

The Cypriot Securitisation Law (discussed in our response to question 7.1 above) applies and no risk-retention-related obligations are imposed therein. Nonetheless, the Securitisation Regulation, which provides that the originator, sponsor or original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5%, is directly applicable to Cypriot entities and shall therefore be complied with when required.

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

The requirement for the credit servicers to be authorised – identified in the response to question 8.2.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

In the case of a person who is resident in Cyprus, tax is charged at the rate specified in the Income Tax Law, No. 118(I)/2002 ("**Income Tax Law**"), upon the income accruing or arising from sources both within and outside the Republic, in respect of, among others, interest.

Therefore, to the extent that the Seller or Purchaser will not be a Cypriot tax resident, respectively, then no Income Tax will be payable on the receivables.

Nonetheless, even if the Seller/Purchaser is a Cypriot tax resident, thus rendering it subject to payment of taxation under the Income Tax Law, it will be liable to pay withholding tax, to the extent the receipt of interest (or other income) from the receivables constitutes part of its normal business activities.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

No such accounting policy is required.

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

Pursuant to the provisions of section 4 of the Cypriot Stamp Duty Law 1963 as amended ("**Stamp Duty Law**"), stamp duty is imposed amongst others on agreements and/or other kinds of documents that refer to any asset that is in Cyprus or to matters or things that will be performed or happen in Cyprus irrespective of whether these documents were executed in Cyprus or abroad. Where an agreement for which stamp duty is imposed is executed outside Cyprus, it shall have no admissibility in any court in Cyprus unless it is duly stamped.

However, under the Cypriot Securitisation Law, no transfer fees and/or stamp duty is payable by the underlying obligors and/or the originator and/or the SSPE, regarding the transfer of the underlying loans and securities, namely the receivables and Related Security, to the SSPE.

9.4 Value Added Taxes. Does your jurisdiction impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

In accordance with the Cypriot VAT Law, No. 95(I)/2000 ("**VAT Law**"), VAT is charged (among others) on the delivery of goods and provision of services within Cyprus.

Therefore, both the Seller and the Purchaser will be required to either charge or be charged with VAT for any services, including collection agent services, they receive, to the extent the conditions for imposition of tax under the VAT Law are satisfied.

Any tax that will arise pursuant to the sale/transfer of the receivables in compliance with the Cypriot Securitisation Law shall not be borne by the underlying obligor.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

As a general rule, the law does not grant taxation authorities with the power to recover any outstanding tax from a person other than the person identified as the person bearing the obligation under the law.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

Subject to the responses to questions 9.2 and 9.3 above, the circumstances described above are not expected to render the Purchaser liable for any taxation in Cyprus; the Income Tax Law only imposes withholding taxation on persons who are residents in Cyprus, and a "resident in the Republic" is defined in the foregoing law as a company whose management and control is exercised in Cyprus or a company who was registered in Cyprus and is not a tax resident in another jurisdiction.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.4 above), is that debt relief liable to tax in your jurisdiction?

This would be assessed from a tax perspective on a case-by-case basis.

Georgia Charalambous has been a member of the Cyprus Bar Association since 2017. She initially worked at the firm as a Trainee and now holds the position of Advocate. She studied law at the University of Southampton and then received a Postgraduate Diploma in Legal Practice (LPC) from BPP Law School in London. Georgia subsequently obtained an LL.M. (European Master's in Law and Economics) from the Erasmus University Rotterdam and the Universities of Bologna and Hamburg. Prior to qualifying as an Advocate in Cyprus, she worked as a Trainee in the secretariat of the Committee on Internal Market and Consumer Protection of the European Parliament. Georgia mainly works in legal advisory, particularly the areas of procurement and banking law.

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